

From: Bowman, Randal
To: [Ann Navaro](#)
Subject: More on Pacific Remote Islands, Rose Atoll
Date: Friday, September 15, 2017 9:16:42 AM
Attachments: [Am Samoa Commercial Fishing re monuments v2.docx](#)
[Pacific Territories and Tuna Fishery.docx](#)
[Summary American Samoa and CNMI Commercial Fishing Issues.docx](#)
[Background AS lawsuit.docx](#)

The 2nd document is a longer version of the 1st one, and the 3rd is a more pointed summary of the 2nd. For the reasons noted in 2nd/3rd documents, (b) (5) DPP

[REDACTED], I then removed that discussion from the paper and focused it on American Samoa.

You might want to read the (b) (5) DPP

[REDACTED]
This covers what I sent to Downey and others. Downey and I discussed this at length earlier based on partial information I had received from NOAA in response to questions I raised, but the NOAA information is incorporated into the attached material.

Commercial Fishing in the Pacific Territories

American Samoa – Rose Atoll Monument waters

Commercial fishing is prohibited but **non-commercial fishing is allowed within Rose Atoll Marine National Monument**, with a fishing permit, in the area from 12 to approximately 50 nautical miles. **To date, no permits have been issued.** The actual Rose Atoll refuge has no marine waters, and so this refuge does not have an impact on commercial fishing.

Prior to the designation of the Monument in 2009, large fishing vessels were prohibited from roughly the same area under a **2002 NMFS rule establishing a "Large Vessel Prohibited Area" (LVPA)**. **This rule originated with the Western Pacific Fishery Management Council (WESPAC)**. Within the LVPA, only vessels under 50 feet could fish. The area of the LVPA (which includes the area now designated as a monument) **was a very important part of the large vessel fleets fishing grounds**, but the restriction on large vessel fishing in this area to help smaller commercial vessels. **Subsequently, the small-vessel fleet (called "alia" fishing vessels) has declined to just 1 active boat and the need for the entire LVPA has diminished.** **WESPAC/NMFS issued regulations to reduce the LVPA area adjacent to but outside of the monument in 2015 to a distance of 12 nm offshore.** **The NMFS action was vacated by a Judge's order in 2017 in a suit brought by the American Samoa government.** The Western Pacific Fisheries Management Council is again considering the need for the LVPA and taking action to reduce the burden of the LVPA on the large vessel fleet.

Samoa Tuna vessels fishing in PRIA Monument waters – (from American Samoa i)

Under the Jones Act, only US-build vessels can fish in the US EEZ at the PRIAs. There is no statutory authority for an exception. Currently there are 40 large longline fishing permits with **15 large longliners based in Smaericam Samoa. Most of them are US-built and would qualify for Jones Act access to fish in US waters.** There are **currently 35 US flagged purse seiners** based in American Samoa, and **9 of these are US-built** and so could fish in PRIA waters if opened.

The purse seiners operate principally under a multilateral treaty which allows them access to fish for tunas in the waters of 16 Pacific Island countries and the **preferred fishing grounds are in foreign zones of the equatorial Western Pacific**. Over the years, most of the US purse seine catch was off-loaded to the canneries in Pago Pago, of which only 1 remains.

Historically, there has been little commercial fishing in the southern PRIAs by the Samoa-based vessels. In 1997, 25% of their catch came from areas off Howland, Baker and Jarvis Islands, but between then and establishment of the Monument the catch was minimal. Their representative said they would like to have the option open to them, particularly since they may need to target tuna species other than albacore in order to make a living in the future.

Roughly 4% of the Hawaii-based longline fishing effort took place in the PRIA EEZ prior to designation and expansion, with about 60% of that coming from the U.S. EEZ around Kingman and Palmyra and most of the remainder from the U.S. EEZ around Johnston.

Islands Unit, Marianas Trench Monument

CNMI tends to have fewer than 50 vessels engaged in commercial pelagic fishing. Most vessels are outfitted with rod and reel gear and lack the capacity for longline gear or to chill large amounts of catch. [i.e. they catch for the local market].

Similarly, the Guam commercial fleet is predominantly a troll fishery and a small charter fishery. Around 200 small commercial vessels are engaged in some aspect of commercial pelagic fishing. Most vessels are outfitted with rod and reel gear and lack the capacity for longline gear or to chill large amounts of catch [also catch for local market].

Research uncovered accounts of 129 trips to the Islands Unit waters spanning the years 1939 to 2009. From 1979 to 2009, this would be an **average of 3.8 trips per year**. Accounts of fishing in the northern islands indicate that **these trips were rarely wholly commercial in nature**. While many operations described in the northern islands intended to make a profit and sell a large portion of their fish, nearly all operations had the **practice of giving a good deal of the catch away to family, friends and the local community, now known as “customary exchange.”**

The oral histories collected for this research indicate that fishing trips to the Islands Unit waters were conducted as much for the experience of traveling to the islands themselves and fishing in the surrounding waters as for a chance of gaining profit.

Permit holders who harvest fish under a non-commercial fishing permit may engage in customary exchange, which helps to preserve traditional, indigenous and cultural fishing practices on a sustainable basis.

Since commercial fishing was prohibited and non-commercial fishing regulations went into effect in 2013 in the Islands Unit, **NOAA Fisheries has not received any applications for non-commercial fishing permits** (i.e., sustenance, recreational and traditional indigenous fishing). According to the resident fishing community, the lack of interest in non-commercial fishing in the Islands Unit can be **attributed to the fact that the cost of gas far exceeds the ability to cover expenses** (“customary exchange” may include reimbursement of direct costs).

Summary American Samoa and CNMI Commercial Fishing Issues

American Samoa

1. Governor and Delegate want us to open Monument waters to commercial fishing at Rose Atoll.
2. Monument waters at Rose Atoll, and a larger surrounding area, were closed to large commercial fishing vessels in 2002 (Monument established in 2009) by West Pacific Fishery Management Council and NOAA in an effort to protect local small-boat ("alia") fishery.
3. The alia fishery is not economically viable and only 1 vessel remains in operation, despite the protective closure designed to shield them from large-vessel competition.
4. When NOAA and the Fishery Management Council reduced the large vessel closure area in 2015, to open a larger area to the long-line fleet that supplies the cannery in American Samoa, the Samoan government sued to keep the closure in place, and won in March of this year.
5. The Governor is quoted as saying the lawsuit victory establishes that "we have rights and they should not be easily dismissed." The Attorney General of American Samoa was quoted as saying "It establishes a critical pathway towards clarifying our relationship with the federal government, as well as our status as a people and culture within the American family."

(b) (5) DPP, (b) (5) ACP



CNMI

1. Neither of the Delegates from Guam or CNMI requested any changes to (b) (5) DPP .
2. There are no large commercial fishing vessels based in Guam or CNMI. Those that were there previously were unable to operate profitably and did not fish in the Islands Unit. There is no market for large volumes of fish in either place, as locally-based smaller vessels supply local markets.
3. There was extremely limited non-commercial fishing in the Islands Unit prior to designation due to the distance between those islands and the CNMI population centers. That fishing is still permitted.

(b) (5) DPP, (b) (5) ACP



Background – American Samoa Lawsuit

Source – *The Samoa News*

HONOLULU — The Western Pacific Regional Fishery Management Council concluded its three-day meeting in Honolulu Thursday with a suite of recommendations, including

Work with NMFS and NOAA General Counsel to review the US District Court's decision regarding Large Vessel Prohibited Area (LVPA) and to evaluate next steps, which could include requesting the Court to stay the decision pending reconsideration or appeal of the court's decision; and further, to provide regulatory relief for the American Samoa longline fleet because it continues to face dire economic conditions. Council Members Christinna Lutu-Sanchez, an owner of American Samoa longline vessels, noted that the longline vessels being prohibited access from the area are owned and operated by local American Samoans. Council Member Taotasi Archie Soliai of StarKist Samoa noted the importance of the albacore tuna caught by the local longline fleet and landed at the cannery. The cannery is the largest non-government employer in the Territory. A second cannery in the Territory closed earlier this year, in part due to difficulties with tuna landings.

Judge Sides With American Samoa Local Fishermen Over Feds

By FILI SAGAPOLUTELE, Associated Press March 22, 2017

PAGO PAGO, American Samoa (AP) — A federal judge in Honolulu has ruled that the decision to reduce the area off-limits to large vessels along the coast of American Samoa "is invalid," clearing the way for exclusive access by local fishermen and small boats. U.S District Court Judge Leslie E. Kobayashi also ruled that National Marine Fisheries Service's change of the rule "was arbitrary and capricious."

Fishing waters had been preserved for the local "alia" — or small boat — fishing fleet from the shoreline out to 50 miles since 2002. Last year, the National Marine Fisheries Service reduced the large-vessel-protected area, or LVPA, to 12 miles from the shoreline, allowing vessels 50 feet and longer to net hauls once reserved for local fishermen.

The plaintiffs, through the American Samoa government, filed the lawsuit in March 2016 arguing that American Samoa's cultural fishing rights are found in the two Deeds of Cession — the 1900 Deed of Cession for Tutuila and Aunu'u islands and the 1904 Deeds of Cession for Manu'a islands — with the U.S.

The defendants, who include the National Oceanic and Atmospheric Administration, countered in court documents that deeds say nothing, about fishing or marine resources and "that silence should not be read to establish rights."

In a 42-page ruling issued Monday, Kobayashi says the Deeds of Cession require the United States to respect the American Samoans' customary practices — such as fishing — even though the deeds do not specifically identify the practices.

American Samoa Gov. Lolo Matalasi Moliga said he hopes the case serves as a reminder to the federal government that "we have rights and they should not be easily dismissed."

American Samoa Attorney General Talauega Eleasalo Ale, who appeared for the territorial government at federal court during oral arguments last month, describes the ruling as "thorough and well-reasoned."

"This decision is the first federal case law to articulate the meaning of the deeds as it relates to our direct dealings with the federal government," Ale said. "It establishes a critical pathway towards clarifying our relationship with the federal government, as well as our status as a people and culture within the American family."

Federal defendants in the lawsuit include NMFS, the Secretary of Commerce, Western Pacific Regional Fishery Management Council executive director Kitty Simonds and the Fisheries Service's Pacific Islands Regional Office administrator Michael Tosatto. Tosatto said late Tuesday afternoon from Honolulu that NOAA Fisheries is reviewing the court's decision and evaluating its next steps. Council spokeswoman Sylvia Spalding said that the council may discuss the ruling as it meets in Honolulu this week.

Legal counsel Frederick Tucker with the NOAA Office of General Counsel-Pacific Islands Section said NOAA hasn't had an opportunity to discuss the ruling extensively with other federal parties including the US Justice Department, which represented defendants in the lawsuit. "Currently, we're in the evaluation state," Tucker said.